

MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:00 PM, TUESDAY, MARCH 10, 2015
BOARD ROOM, CLAY COUNTY COURTHOUSE

Members Present: Greg Anderson, Paul Krabbenhoft, Perry Bushaw, Pamela Harper

Members Absent: None

Others Present: Tim Magnusson, Colleen Eck, Jenny Samarzja, Kevin Braseth, Leslie Dunham, Joanne Dunham, Clarice Softing, Bob Softing, Tadd Skaurud, Darla Skaurud, Randy Bjornson, David Sogn, Jeff Rehder, Jeff Formo

Chair Paul Krabbenhoft called the meeting to order at 5:00 p.m. and read the agenda.

On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the commission approved the agenda as written.

On motion by Pamela Harper, seconded by Greg Anderson, and unanimously carried, the Board approved the minutes from September 16, 2014 as written.

TADD AND DARLA SKAURUD - REQUEST FOR VARIANCE

The applicants are seeking approval of a variance to allow a structure to be located as close as one hundred (100) feet from the Ordinary High Water (OHW) level of Lake Fifteen. The Clay County Land Development Code requires at setback of at least one-hundred fifty (150) feet from a structure to the OHW. The affected property is Lot 9, Sunset Beach Subdivision located in the NE Quarter SE Quarter Section 15, T138N, R44W (Parke Twp), in the Shoreland-Residential (S-R) zoning district.

On motion by Greg Anderson, seconded by Pamela Harper, and unanimously carried, the Board opened the public hearing.

Tim Magnusson, Planning Director, displayed aerial views of the site, still showing the previous mobile home that has since been removed from the site. That mobile home had been placed approximately 100 feet from Lake 15. The applicant is proposing to move in a cabin and place it approximately 110 feet from the lake. Plans for constructing a deck on the front of the cabin would make the final setback of 100 feet from the OWH. The cabin would essentially be placed in the same location where the mobile home was located, between the well and existing septic system. The site sketch was displayed showing the septic system, the well, and the mature trees. The lot, which was platted decades ago, is not deep enough to meet the current setbacks, and does pose a practical difficult for the owner. Magnusson noted that the request seems reasonable and would not alter the character of the neighborhood. Other structures along the lakeshore that do not meet 150 feet were pointed out. The proposed structure is not a four-season home, would be used just seasonally, and would utilize the existing holding tank. They would not be able to place any structures on the lot to meet the setbacks. There is no plan to remove mature trees from

the property. Lake 15 is a Natural Environment lake with Residential District zoning, and has a setback of 150 feet for structures from the OWH level. If the variance is approved, whatever structure was placed on the lot would have to meet the 100 feet setback. The side yard setback is 10 feet and should be able to be met.

The staff recommendation is to grant the variance to allow a reduction of the required setback (150 feet) from a structure to the Ordinary High Water line of Lake Fifteen. Said setback would allow the structure (including the deck) to be constructed no closer than 100 feet for the following reason(s):

- 1) The proposed variance is in harmony with the general purpose of the zoning district and intent of the Development Code;
- 2) The proposed variance constitutes a 33.3% reduction in the required setback;
- 3) The circumstances related to this request constitute a “practical difficulty” related to the size of the lot and the fact that it is the replacement of a previous structure;
- 4) The variance would not alter the essential character of the locality.

The applicant, Tadd Skaurud, stated that they do not intend to take down any of the trees on the property. They will “shoehorn” the cabin in among the oak trees, evergreens, and power lines. With the proposed location, he is also keeping his option open for adding a garage someday.

Jeff Formo stated that he lives on the south side of the same lake and has no problem with the applicants, but noted that the means of measuring setbacks on the lake lots seem to vary. He commented that it varies from County staff measuring, to property owners doing their own measurements, to using the string line measurement. He would like to see some consistency in this area because measurements aren’t being checked unless there is a complaint from a neighbor. He mentioned one lot where the string line was used, but it does not seem to be in line. He asked about the septic system, and was told that the septic tank was inspected last year when the property exchanged hands. He added that the setback might as well be changed to 100 feet so there isn’t a need for so many variances and public hearings.

On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board closed the public hearing.

Bushaw noted that the requested variance to the setback seems to be in with the neighborhood.

On motion by Greg Anderson, seconded by Pamela Harper, and unanimously carried, the Board of Adjustment approved a request for a variance from Tadd & Darla Skaurud to allow a residential structure to be located as close as 100 feet from the Ordinary High Water (OHW) level of Lake Fifteen. The current setback is 150 feet from a structure to the OHW level. Said property is described as Lot 9, Sunset Beach Subdivision in the NE¼ SE¼ Section 15, Parke Township. The variance is allowed for the following reasons:

- 1) The proposed variance is in harmony with the general purpose of the zoning district and intent of the Development Code.**
- 2) The proposed variance constitutes a 33.3% reduction in the required setback.**
- 3) The circumstances related to this request constitute a “practical difficulty” related to the size of the lot and the fact that it is the replacement of a previous structure.**

4) The variance would not alter the essential character of the locality.

SUMMIT SAND AND GRAVEL – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to allow operation of a gravel mine as close as zero feet from an adjoining property line. The Clay County Land Development Code requires a setback of at least one hundred (100) feet from mining operations to an adjoining lot line. The affected property is located in the SW Quarter NE Quarter, Section 27, T138N, R46W (Elkton Twp.) in the Agricultural General (AG) and Resource Protection Aggregate (RP-Agg) zoning districts.

On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board opened the public hearing.

Tim Magnusson, Planning Director, asked the applicant if the variance request is for 20 feet or 0 feet. The applicant noted that he would prefer zero feet, but was told that the fence is located at 20 feet and thought he had to go with that distance. If he is allowed to request a zero foot setback from the property to the south, owned by Manston, he would prefer requesting zero feet. They would end up lowering the property line fence.

Magnusson displayed an aerial photo showing the past mining effort on the property, and mining on the property to the south does not meet the current 100-foot setback requirement. The intent of requiring a 100-foot setback from an adjacent property is to allow the appropriate grading and sloping of a mined area during reclamation. Magnusson noted that if the intent of the Ordinance is to allow for the most efficient use of aggregate mining, it may be wise to consider allowing closer setbacks between these two pits, as long as final grading and sloping of mined areas meets the requirements for reclamation. To ensure there are no issues with a variance, the adjoining property owner must agree to such a setback reduction and should attest to said agreement in writing.

Magnusson stated that the northeast portion of this property is in a rim easement and cannot be mined. The variance request is to allow the applicant to recover as much resource material from the site as possible. Without a variance, the applicant would not be allowed to mine approximately 7% of the gravel reserves from the mining area. If two aggregate mines abut one another, and they concurred to the setbacks, there would be a 200-foot strip left between the mines. Other companies have gotten variances and then reclaimed the entire site.

Magnusson read an agreement letter that had been signed by the property owner of this site (Matt Halverson) and the property owner of the site to the south (Shirley Manston). This agreement letter had not been notarized. Assistant County Attorney Jenny Samarzja asked if future property owners of these two parcels would also need to sign an agreement, and if the letter should be part of the variance conditions. She did not believe that the Planning Commission had made this type of written request with other variance setbacks for mining.

The applicant, David Sogn (Summit Sand and Gravel) stated that the landowner had had the neighbor sign the letter of agreement to the variance. Sogn commented that they are under no

obligation to reclaim the portion of the area that was formerly mined, unless they find there is enough material in that area to do additional mining. They may slope the edges of the old pit when they reclaim the pit that they will mine. Sogn noted that they have checked the old mine for resources, but it may not be worth pursuing as there are many large trees that have grown in there. He added that there are no more than 20 acres of material. There is also a setback from the rim easement, which is between NRCS and the property owner. Sogn introduced Jeff Rehder who is the owner of Summit Sand and Gravel. The two of them have worked in the mining industry for many years, but just recently started Summit Sand and Gravel. The property owners were not present. Samarzja noted that the signed letter could be filed as validation that all parties are okay with zero setback between the properties. The Planning Commission members agreed that the requirement of the letter as a condition of the permit is not needed.

The Chair of the Planning Commission asked if there was anyone else present who wished to speak for or against the request.

On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board closed the public hearing.

On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board of Adjustment approved a variance to Summit Sand & Gravel to allow mining of gravel up to the southern property line, rather than maintaining a 100-foot setback from the property line. The property (owned by Matt & Teresa Halverson) is in the SW¼ NE¼ Section 27 Elkton Township. The variance was approved due to practical difficulties and the following conditions were added:

- 1) Mining area shall not exceed the 20 acres.**
- 2) No mining in the setback area shall take place until a reclamation plan is developed, submitted, and approved by the Planning Office.**

SUMMIT SAND AND GRAVEL – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to allow operation of a gravel mine as close as zero feet from an adjoining property line. The Clay County Land Development Code requires a setback of at least one hundred (100) feet from mining operations to an adjoining lot line. The affected properties are located in the SW Quarter NE Quarter and East Half NE Quarter, Section 25, T138N, R45W (Skree Twp.) in the Agricultural General (AG) zoning district.

On motion by Greg Anderson, seconded by Pamela Harper, and unanimously carried, the Board opened the public hearing.

Tim Magnusson, Planning Director, stated that this variance request involves the east side of a mining site. The applicant intends to mine two areas on the site. One of the mining areas abuts the eastern property line of this parcel. The same applicant plans to mine property on the adjacent parcel to the east of this site, but that agreement has not been finalized yet. The applicant will need to maintain the setback of 100 feet on the east side until a mining permit and variance to the property setback have been permitted for the property to the east which is currently owned by a brother and sister.

Magnusson pointed out on an aerial photo where the mining sites and setbacks are located. The intent of requiring a 100-foot setback from an adjacent property is to allow the appropriate grading and sloping of a mined area during reclamation. In this case the adjacent property will also be a gravel mine and if both operations met the required setback there would be a 200-foot wide strip between the pits that could not be mined. It is the intent of the Ordinance to allow aggregate mining and the most efficient use of the material available. It would be wise to allow mines on adjacent properties to join together at the property line as long as both land owners agree to it and the development and implementation of a joint mining reclamation plan.

Paul Krabbenhoft asked the applicant why he is applying for one variance at this time, instead of requesting both of the property variances together. The applicant, David Sogn, stated that there are some issues with the estate on the adjoining property, but they are being worked out. He noted that there is a lot of aggregate material that they hope to mine along the property lines. Their intent is to haul out of both sites in a westerly direction on the same haul road. They would avoid all township roads.

On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board closed the public hearing.

Magnusson confirmed that the only setback being addressed in this variance is on the east side of the property. The applicant would need to adhere to the 100-foot setbacks on the north and south sides of the parcel.

On motion by Greg Anderson, seconded by Pamela Harper, and unanimously carried, the Board of Adjustment approved a variance to Summit Sand & Gravel to allow mining gravel as close as zero feet from an adjoining property line on the east. The mining site is described as SW ¼ NE ¼ and E ½ NE ¼ Section 25, Skree Township. The variance was approved due to practical difficulties and with the following conditions:

- 1) Allow a zero foot setback on east side of the property in the area approved for future mining on the neighboring property to the east.**
- 2) Mining area on this parcel shall not exceed 30 acres.**
- 3) No mining in the 100-foot setback area shall take place until an IUP for mining and a variance for property line setback are issued for the adjacent property to the east of this parcel.**
- 4) No mining in the 100-foot setback area shall take place until a joint reclamation plan for this site and the site to the east is developed, submitted, and approved by the Planning Office.**

On motion by Greg Anderson, and seconded by Perry Bushaw, the meeting was adjourned at 6:15 p.m.